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At first blush it would seem that here the court had overstepped the general rule that where inspection is had at the time of making the bargain, the inspection precludes the existence of any implied warranty of quality. *Barnard* v. *Kellogg,* 10 Wall. 383; *Dorsey* v. *Watkins,* 151 Fed. 340; *White* v. *Oakes,* 88 Me. 367, 34 Atl. 175; *Farrell* v. *Manhattan Market Co.,* 198 Mass. 271. Here there was not only opportunity for inspection, but there was inspection in fact, of the specific goods delivered, and the defect was not necessarily hard to discover. But upon closer scrutiny it will be seen that the case is directly in line with the more modern trend of authority tending to give efficacy to the description of the goods given by the vendor, and relied upon by the vendee, and abrogating the doctrine of caveat emptor. WILLISTON, SALES, p. 300 et seq. At common law there was no implied warranty of quality originallly. *Parkinson* v. *Lee,* 2 East 314. But the doctrine has grown until now by the Uniform Sales Act, passed by Massachusetts in 1908, Art. 3, § 15, C. 237 of the Acts and Resolves of Massachusetts, it is provided that if the buyer examines the goods there is no implied warranty as regards defects *which such examination ought to have revealed.* It will be noted that the old rule is changed by the clause "which such examination ought to have revealed." Thereby is added to the question of whether the vendee relied upon the description of the vendor, the question of the nature of the defect. Here it is clear that the vendee not only relied upon the description as is shown by his making but a superficial examination, but that the defect was one which no ordinary inspection would reveal; thereby bringing the case completely within the majority rule instead of allowing it to stand as an exception.

WILLS—TESTAMENTARY TRUSTS—INCOME—CAPITAL.—Testator gave his residuary estate to trustees to manage and to pay the "interest or earnings" to his children during their lifetime, with gift over after their respective deaths. The trustees held stock in a corporation organized to conduct a lumbering business and buy and sell real estate. The investment by testator and trustees had amounted to $196,000 when a special dividend of $676,000 was declared upon the stock, representing proceeds from a sale of part of the timber land possessed by the corporation. *Held,* that this dividend constituted part of the *corpus* of the trust and was not income available to the life tenants. *Ex parte Humbird* (Md. 1911) 80 Atl. 209.

The court declared that the mere form of the dividend in no way controlled its disposal, 10 Cyc. 559, *Thomas* v. *Gregg,* 78 Md. 545, 28 Atl. 565, 44 Am. St. Rep. 310. In *Thomas* v. *Gregg, supra,* which was expressly affirmed, the Pennsylvania doctrine, that the origin and character of the fund out of which the dividend was paid will be taken into consideration, and if it represents earnings it is income and that part of the earnings that have accumulated during the existence of the trust fund belongs to the life beneficiaries, but if the dividend represents an appropriation of capital it belongs to the *corpus* of the estate, was adopted. *Smith's Estate,* 140 Pa. 344. This differs from the Massachusetts rule, namely, that a cash dividend is income and a stock dividend capital, and from the New York decisions which give that portion of the income earned prior to the establishment of the trust fund to the

life beneficiaries. *Minot* v. *Paine,* 99 Mass. 101, *In re Kernochan,* 104 N. Y. 618; see note to 12 L. R. A. (N. S.) 768, 772, 775, 777. An effort was made to bring the case within the principle that when a business necessarily involves the consumption or change of form of its capital, then a dividend representing such consumption or change is income. 12 L. R. A. (N. S.) 769, 803. Such would be the case of a corporation organized for the purpose of buying and selling real estate. In the *Matter of James,* 146 N. Y. 78, 40 N. E. 876; *Thomson's Estate,* 153 Pa. 332; *Reed* v. *Head,* 6 Allen 174. The court rejected this argument because the company was doing a lumber business and had not exercised its right to actively engage in the business of buying and selling timber land. The enhanced value of land is not income, but belongs to the *corpus. Kalback* v. *Clark,* 133 Ia. 215, 110 N. W. 599.